S.B.Civil Misc. Appeal No.1053/2005

Heera Lal vs. Shanti Lal.

Date : 25.8.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Narpat Singh, for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the order dated 7.5.2005 by which the appellate court held that the trial court committed error of law while not deciding the issues no.1 and 4. The appellate court directed the trial court to decide the issues afresh.

Brief facts of the case are that a suit for permanent injunction was filed by the plaintiff/respondent. In the suit, in view of the pleadings of the parties, the issues were framed. The issue no.1 was whether the plaintiff is owner of the property in dispute ? The issue no.4 was whether since the plaintiff and his father Jagannath did not remain member of the family as Jagannath went in adoption to other person, therefore, the plaintiff lost his right, title and interest in the property nor he has possession over the property ? The burden to prove issue no.1 was upon the plaintiff and that of issue no.4 was upon the defendant.

The trial court in detail considered the evidence of the parties and thereafter very categorically held that the suit property is ancestral property of the plaintiff's father also. However, the trial court held that the plaintiff failed to prove partition. Despite this finding, the trial court in last para while recording finding on issue observed that there is no need to record finding on the issue of ownership of the property. On the face of it, the finding is self contradictory. The trial court gave only reason that since the plaintiff failed to prove his possession over the property in dispute, therefore, this issue of ownership is not required to be decided.

In a suit for injunction when the plaintiff came with a positive case that he is owner of the property and claiming injunction, then the question of ownership cannot be considered to be so irrelevant so that the Court can ignore the facts relating to ownership.

The issue no.4 was about the adoption of Jagannath and that issue was framed on the basis of defence taken by appellant. The issue of adoption was also not decided by the trial court. That too on the ground that the suit is not for declaration of adoption of Jagannath.

It appears that the trial court failed to appreciate that the issue was framed not on the basis of the plea of the plaintiff but it was framed on the basis of the plea of the defendant himself. Therefore, it is not a case where the plaintiff sought declaration in the suit for injunction

about the adoption of his father.

In view of the above, if the appellate court has remanded the matter back to decide the issues in accordance with law, it has not committed any error of fact or law.

Accordingly, this misc. appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya